

In the Central Administrative Tribunal
Calcutta Bench

OA No. 274 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Arup Kumar Mukhopadhyay Applicant

- Versus -

- 1) The Director of Estate(Region),
Directorate of Estates, Government
of India, Nirman Bhawan, New Delhi.
- 2) The Estate Officer and Estate Manager,
Government of India, 5, Esplanade East,
Calcutta.
- 3) The Director General, Geological Survey
of India, Jawaharlal Nehru Road, Calcutta.

.... Respondents

For the Applicant : Mr. J.K. Biswas, Advocate
Mr. S.K. Mitra, Advocate

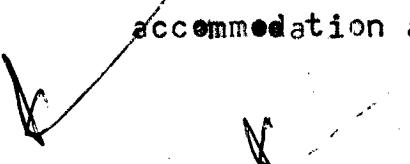
For the Respondents : Mr. B. Mukherjee, Advocate

Heard on : 3.3.1999

Date of Judgement : 18/3/99

ORDER

The question for decision in this case is whether the decision regarding charging of damage rate of rent contained in the letter dated 16.5.96 (Annexure A-18) issued by the Directorate of Estates and in the letter dated 9.9.96 (Annexure A-21) and in the letter dated 5-2-1997 (Annexure A-24) to the application can be said to be justified on the facts of this case. According to the applicant, he was holding the post of Director(Geology), G.S.I., Calcutta and he was transferred from Calcutta to Shillong in public interest in the month of September, 1993 and he took over the charge there on 6.9.93. On transfer, he applied for one type below alternative general pool accommodation as per rules vide his application dated 16.9.1993. He

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also requested the authority for accommodation either at Belvedere Street or at Nizam Palace, Calcutta. It be mentioned that in the meantime he continued to stay at the old allotted accommodation at Flat No.51, Type-V, Belvedere Street, Calcutta. But respondents did not take any action on the application dated 16.9.93 regarding allotment of the quarters as prayed for till 1994. However, respondents, vide letter dated 1.11.94, allotted an alternative Type-IV accommodation at Garcha First Lane, Calcutta and that letter was received by his wife at Calcutta address. Since the applicant was away at Shillong, his ailing wife replied the Estate Manager vide letter dated 4.11.94 to re-consider the allotment in favour of Belvedere Street and that letter was ratified by the applicant when he came to Calcutta vide letter dated 23.11.94. He further, vide letter dated 18.1.95, requested the Estate Manager again to allow him a below Type-IV accommodation either at Belvedere Street or at Nizam Palace or charge him three times of the flat rate of licence fee or full standard licence fee under FR 45-A by allowing him to continue to stay at the already allotted Type-V accommodation at Belvedere Street. But respondents did not inform him of any decision regarding allotment of the quarters as prayed for. Suddenly, he received one letter dated 7.7.95 from the respondents where he was declared unauthorised occupant of the said quarters and asked to pay the market rent for his accommodation w.e.f. 1.11.94 at the rate of Rs.4079/- p.m. as damages and also it was stated that eviction proceeding would be initiated for unauthorised occupancy against him. On receipt of the said letter dated 7.7.95, the applicant made an application to the Estate Manager on 31.7.1995 to allow him below type quarters either at Belvedere Street or at Nizam Palace and also consider his case so that he might not be unduly penalised. He also volunteered to pay three times of the flat rate of licence fee as per provision under FR 45-A. Subsequently, he received two show cause notices dated 19.9.95 and 22.9.95 issued by the Estate Manager asking him for personal hearing and thereafter, his wife wrote to the Estate Manager, Calcutta on 4.10.95 that her husband had been transferred from N.E.R.O. to Calcutta w.e.f. 4.10.95 and he shall contact

the Estate Manager immediately on his arrival at Calcutta. Thereafter, the applicant was again asked to appear before the Estate Manager on 16.10.95 vide letter dated 9.10.95. He hoined Calcutta on 9.10.95 and met the Estate Manager on the same day and he submitted an application in prescribed form for regularisation of his occupied quarters at Belvedere Street on re-posting at Calcutta from North-Eastern Region. He also sent letter to this effect for regularisation of the quarters and thereafter, he received a letter dated 24.6.96 from the Estate Manager, Calcutta where it has been mentioned that regularisation of the aforesaid quarters may be effective w.e.f. 20.10.95 subject to clearance of Government dues as damages rates for the period from 1.11.94 to 19.10.95. Subsequently, he received another letter dated 9.9.96 from the Office of the Estate Manager, Calcutta where they demanded Rs.61,115/- as outstanding amount to be recovered from him. Thereafter, the applicant approached the authority for consideration of his case; but to no effect and ultimately he approached the Tribunal by filing this application for getting appropriate relief as prayed for.

2. Respondents resisted the claim of the applicant by filing written statement. In the written statement it is stated that it is admitted by the respondents that on 1.11.94 Flat No.17-D, Garcha First Lane, Type-IV was allotted in favour of the applicant as an alternative accommodation in lieu of Flat No.51, Belvedere Street. Inspite of the said allotment, he did not vacate the quarters at Belvedere and retained the same without taking any approval from the authority. After transfer from Calcutta to Shillong, he was also not authorised to retain the Type-V quarters at Belvedere Street, Calcutta. Thereby, he was rightly deemed to be an unauthorised occupant of the quarters (Type-V) and accordingly, he was charged damage rent for unauthorised occupation of the quarters as per rules. So, application is devoid of merit and liable to be dismissed.

3. Advocate Mr. Biswas on behalf of the applicant submits that the charge of damage rate of rent for retention of the quarters is highly arbitrary and illegal because of the fact that the applicant was directed to send his acceptance of Type-IV quarters within 5 days from

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the date of receipt of the said order. It was mentioned in the said letter of allotment that if the applicant fails to send his acceptance within the stipulated period, the allotment would be deemed to have been refused and applicant's case would be dealt with in accordance with the provisions of SR-317-B-10/15 of the Government Residence (General Pool in Delhi) Rules, 1963 (Annexure A-2). Applicant's wife immediately on 4.11.94 submitted a representation to the Estate Manager in response to the said order of allotment dated 1.11.94 where she stated her problem and inconvenience for non-acceptance of the allotment and requested for re-consideration of the allotment order issued by the Estate Manager. It is also contended by the Lt. Advocate Mr. Biswas that the applicant also expressed his desire to pay higher rate of rent for accommodation of higher Type-V quarters as per rules; but respondents did not take any action on that score. Since, applicant expressed his desire to pay the higher rate of rent for accommodation of the higher Type-V quarters beyond his entitlement, thereby respondents were not justified to charge damage rent treating him unauthorised occupant of the said quarters. (52N) So, entire action of the respondents, as stated in the application, is highly arbitrary and illegal and liable to be quashed.

4. Lt. Advocate Mr. Mukherjee, appearing on behalf of the respondents, strenuously argues before me that the applicant has no right to retain the quarters beyond his entitlement after his transfer from Calcutta to Shillong. As per rules, he is entitled to one type below quarters and accordingly, he was allotted Type-IV quarters at Flat No. 17-D, Garcha First Lane on 1.11.94. But he did not accept the allotment order. So, he was rightly charged the damage rent for unauthorised occupation of the quarters for the period mentioned therein. Thereby, applicant should have no grievance for realisation of damage rent vide letter dated 7.7.1995.

5. In view of the divergent arguments advanced by the Lt. Advocates of both the parties, it is an admitted fact the applicant has been transferred from Calcutta to North Eastern Region in the month of September, 1993 and as per rules, he applied for alternative accommodation i.e. one type below accommodation (Type-IV) at Calcutta. But

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respondents did not take any action on the prayer made by the applicant for making alternative accommodation till 1.11.94. As per rules, a government servant on transfer to North Eastern Region from Calcutta is entitled to alternative accommodation i.e. one type below accommodation as per his entitlement. It is an admitted fact that applicant was allotted an alternative accommodation vide letter dated 1.11.94 (Annexure A-2 to the application) and it is mentioned in the said order of allotment that if no such acceptance is received within the prescribed period of 5 days, the allotment will be deemed to have been refused and his case will be dealt with in accordance with the provisions of SR-317-B-10/15 of the said rules. Admittedly, on receipt of the said allotment order dated 1.11.94 (Annexure A-2) applicant did not accept the same; but made a fresh representation for re-consideration of the order of allotment on the ground stated therein. From the Clause 3 of the allotment order it is found that on refusal, the said order of allotment of Type-IV quarters will be liable to be cancelled; but that does not indicate the order of cancellation of allotment in respect of old Type-V quarters. Admittedly, the applicant is not entitled to retain the quarters ^{on type below} ~~on type below~~ transfer. But applicant applied for alternative accommodation and subsequently he expressed his desire to allow him to continue to stay in the old quarters on payment of higher rate of rent as per rules. It is found that respondents did not consider that prayer and charged damage rent. I find that there is a provision of realisation of licence fee in case of allotment of higher accommodation i.e. higher type of quarters on request of the government servant. In that case, three times of the flat rate of licence fee or full standard licence fee under FR 45-A, whichever is higher, is liable to be charged from the official if the allotment is made on his own request. I find that since applicant had already expressed his desire to pay three times of the flat rate of licence fee or full standard licence fee under FR 45-A, whichever is higher, for occupation of the Type-V quarters beyond his entitlement on transfer from Calcutta to North Eastern Region, respondents could have taken a decision on that point. It is

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found that respondents, instead of considering the said fact, had charged damage rent. In view of the aforesaid circumstances, I am of the view that the order of charging damage rate of rent appears to be arbitrary and illegal on the face of the option exercised by the applicant to pay higher rate of licence fee as per rules. In view of the aforesaid circumstances, I am of the view that the assessment of damage rent was made overlooking the said provisions of the Rules. Thereby, I quash all the orders and direct the respondents to realise the licence fee from the applicant for occupation of the Type-V quarters for the period mentioned above at the rate of i.e. three times of the flat rate of licence fee or full standard licence fee under FR 45-A, whichever is higher. With this observation, application is allowed awarding no costs.

1/500 8/7/99
(D. Purkayastha
Member(J)